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Paper No. 5

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OFFICE OF PETITIONS

DECISION GRANTING
PETITION

In re Application of
Stiberman
Application No. 09/943,576
Filed: August 30, 2001
Attorney Docket No. 41693.010100

This is a decision on the petition under 37 CFR 1.53(e), filed October 23, 2001, requesting, in effect, withdrawal of the Notice to File Omitted Item(s) in a Nonprovisional Application (Notice), mailed October 9, 2001.

The application was deposited on August 30, 2001. On October 9, 2001, the Office of Initial Patent Examination mailed a Notice informing petitioners that page 21 of the specification was omitted.

In response to the Notice, petitioner timely filed the present petition on October 23, 2001. Petitioner requests that page 21 be accorded a filing date of August 30, 2001 on the basis that the entire specification, including missing page 21, was received in the Patent and Trademark Office (PTO) on August 30, 2001. In support, the petition is accompanied by a copy of applicant's itemized postcard receipt showing an Office of Initial Patent Examination generated barcode showing August 30, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 23 pages of specification.

The return postcard constitutes *prima facie* evidence that the entire specification, including missing page 21, was filed on August 30, 2001. MPEP 503. Accordingly, the request is granted.

Pursuant to petitioner's request, a treasury check for the \$130.00 petition fee will be scheduled in due course.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of August 30, 2001, using the copy of page 21 supplied with the petition.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy